

FILED

October 6, 2022

Mark B. Busby
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

**UNITED STATES JUDICIAL PANEL
 on
 MULTIDISTRICT LITIGATION**



**IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
 AND MECHANICAL VENTILATOR PRODUCTS
 LIABILITY LITIGATION**

MDL No. 3014

TRANSFER ORDER

Before the Panel:* Plaintiffs in the *Newsome* action listed on Schedule A move under Panel Rule 7.1 to vacate our order that conditionally transferred *Newsome* to the Western District of Pennsylvania for inclusion in MDL No. 3014. Defendants Philips RS North America LLC, Philips North America LLC, and Respironics, Inc., oppose the motion.

In support of their motion to vacate, plaintiffs argue that federal subject matter jurisdiction over *Newsome* is lacking and that the transferor court should decide their pending remand motion before any transfer. Plaintiffs' arguments are not persuasive. The Panel has held that jurisdictional objections such as those asserted by plaintiffs here generally do not present an impediment to transfer.¹ See, e.g., *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347–48 (J.P.M.L. 2001) (“[R]emand motions can be presented to and decided by the transferee judge.”). “This is so even where, as here, plaintiffs assert that the removals were patently improper.” *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018).

Therefore, after considering the parties' arguments, we find that the action listed on Schedule A involves common questions of fact with the actions transferred to MDL No. 3014, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the Western District of Pennsylvania was an appropriate Section 1407 forum for actions sharing factual questions arising from Philips' recall of certain Continuous Positive Airway

* Judges Nathaniel M. Gorton, David C. Norton, and Roger T. Benitez did not participate in the decision of this matter.

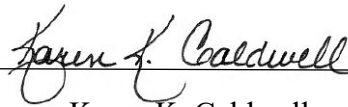
¹ Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so. Here, plaintiffs moved for remand over two months ago, and the transferor court denied plaintiffs' request to expedite a hearing on the motion.

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Pressure (CPAP), Bi-Level Positive Airway Pressure (Bi-Level PAP), and mechanical ventilator devices on June 14, 2021. The recalled devices allegedly contain polyester-based polyurethane (PE-PUR) sound abatement foam that may degrade into particles or off-gas volatile organic compounds that may then be ingested or inhaled by the user, causing injury. *See In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Prods. Liab. Litig.*, 568 F. Supp. 3d 1408, 1409–10 (J.P.M.L. 2021). As in many of the cases already in the MDL, plaintiffs in *Newsome* allege that the decedent suffered physical injury caused by the alleged problems with the PE-PUR foam in one of the recalled devices.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Western District of Pennsylvania and, with the consent of that court, assigned to the Honorable Joy Flowers Conti for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell
Chair

Matthew F. Kennelly
Madeline Cox Arleo

Dale A. Kimball

**IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP,
AND MECHANICAL VENTILATOR PRODUCTS
LIABILITY LITIGATION**

MDL No. 3014

SCHEDULE A

Northern District of California

NEWSOME, ET AL. v. PHILIPS NORTH AMERICA, LLC, ET AL.,
C.A. No. 4:22-04101